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DEC 3 1990

No. 90-723

JOSEPH F. SPANIOL, JR.
CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1990

MASHUQ A. QURESHI, M.D.,
Petitioner,
v.

PHICO INSURANCE COMPANY, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the District of Columbia Circuit

BRIEF IN OPPOSITION OF
RESPONDENTS PHICO INSURANCE COMPANY,
DONALD G. STEFFES, MAYNARD R. STUFFT,
ARTHUR BECKER, AND JOSEPH RICCI, M.D.

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and Joseph Ricci, M.D.

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QUESTION PRESENTED

Whether this Court should review, in a diversity case, the reading by the Court of Appeals of the application of Virginia law to a private contract dispute.

STATEMENT REQUIRED BY RULE 29.1

Respondent PHICO Insurance Company is a wholly-owned subsidiary of PHICO Group, Inc. PHICO Group, Inc. is a wholly-owned subsidiary of The Hospital Association of Pennsylvania. PHICO Insurance Company owns Pennsylvania Insurance Management Company (PIMCO).

The individual respondents in this action are Donald G. Steffes, Maynard R. Stufft, Arthur Becker, and Joseph Ricci, M.D. These individuals were employees of Phico Group, Inc. at the time this civil action was filed.

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STATEMENT OF THE CASE

This case concerns a unanimous decision by the United States Court of Appeals for the District of Columbia Circuit (Mikva, Buckley and D.H. Ginsburg, JJ.) in which the court affirmed by *Per Curiam* Order the granting of summary judgment to Respondent PHICO Insurance Company ("PHICO").¹ Dr. Qureshi's petition for rehearing *en banc* was denied by the Court of Appeals.

¹ The individual respondents were dismissed by the District Court earlier in the case. The summary affirmance by the Court of Appeals also upheld the dismissal of the individual respondents. Pet. App. E at 2.

This dispute began on July 15, 1986 when Dr. Qureshi filed a civil action against PHICO, the individual respondents, and the National Capital Reciprocal Insurance Company ("NCRIC"). Dr. Qureshi, who is a non-board certified physician specializing in internal medicine, alleged that PHICO failed to provide him with appropriate notification when PHICO decided to not renew Dr. Qureshi's professional liability insurance. The claim against NCRIC concerns a decision by NCRIC to not issue a new professional liability policy to Dr. Qureshi after PHICO declined to renew coverage for Dr. Qureshi.

The undisputed record in this case is that in June, 1985, Dr. Qureshi advised PHICO that his privileges to admit or care for patients were suspended by Alexandria Hospital. These privileges were suspended after a series of hearings by the Executive Committee of the Medical Staff of the Hospital. Upon learning of the suspension of Dr. Qureshi's privileges at Alexandria Hospital, PHICO reviewed Dr. Qureshi's file and discovered that Dr. Qureshi had reported four claims during the four consecutive years that he was insured by PHICO. Based upon this information, PHICO advised Dr. Qureshi that it would not renew his policy for a fifth year. This decision was communicated to Dr. Qureshi forty-one days before the expiration of his policy on October 15, 1985.

In granting summary judgment to PHICO, the District Court found that although the PHICO insurance policy under review required that PHICO provide Dr. Qureshi with sixty days notice of cancellation of the policy, the policy was silent as to any notice period for non-renewal of the policy. Thus, as determined by the District Court, PHICO did not commit a breach of the insurance contract by providing Dr. Qureshi with forty-one days notice of non-renewal. Pet. App. B at 8-12. Moreover, the District Court held that there was no Vir-

ginia statutory period that mandated greater notice to Dr. Qureshi. Pet. App. D at 6-7.²

After unsuccessful appellate review, Dr. Qureshi now petitions this Court for a writ of certiorari.

REASONS FOR DENYING THE WRIT

Petitioner seeks review of a narrow decision by the Court of Appeals that resolved a private contract dispute between the parties. This case poses no federal issues. There is no federal constitutional or statutory provision worthy of review.³ Each argument advanced by Dr. Qureshi for granting the writ does not warrant the invocation of this Court's discretionary power of review.

Moreover, the decision by the Court of Appeals is eminently correct. The PHICO insurance policy under review, on its face, did not require a sixty day notice of non-renewal as argued by Dr. Qureshi. Equally clear is the fact that there was no Virginia statute in effect in 1985 that mandated a notice period for non-renewal of a professional liability insurance policy.

What Dr. Qureshi really objects to is the interpretation of Virginia law by the District of Columbia Circuit.

² PHICO's summary judgment proceeding was heard twice by the District Court and the Court of Appeals. The first ruling by the District Court granting summary judgment to PHICO erroneously cited a Virginia statute that concerned notification periods for automobile insurance. Pet. App. B at 12-13. The Court of Appeals noted the error and remanded the case to the District Court for further review. Pet. App. C at 4. On remand, the District Court found that there was no Virginia insurance statute applicable in 1985 on the issue of notification of non-renewal of professional liability insurance. Pet. App. D at 6-7. The Court of Appeals affirmed this finding as correct. Pet. App. E at 2.

³ The reference to the constitutional issue in the Questions Presented cannot stand as a basis for granting this writ. The summary affirmance by the Court of Appeals did not turn on any real or perceived constitutional issue, nor does Dr. Qureshi argue the constitutional issue as a reason for granting the writ. See Pet. at 8-11.

While, of course, this Court has the constitutional power to review a Court of Appeals' interpretation of state law in a diversity case such as this one, there is no need for such an extraordinary use of its powers here.

CONCLUSION

For these reasons, the petition should be denied.

Respectfully submitted,

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